

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">VOLUME: I PAGES: 1 - 174 EXHIBITS: 1 - 9</p> <p style="text-align: center;">UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS</p> <p style="text-align: center;">-----X</p> <p>CARLOS A. AGUIAR Plaintiff</p> <p style="text-align: center;">CIVIL ACTION NO. 04-12011-MLW</p> <p>Vs. LIMA & CURA FISHING CORPORATION Defendant</p> <p style="text-align: center;">-----X</p> <p style="text-align: center;">DEPOSITION OF DAVID DUBOIS</p> <p>taken on behalf of the Plaintiff pursuant to the Federal Rules of Civil Procedure, before Carole M. Wallace, Certified Shorthand Reporter and Notary Public, at the offices of Regan & Kiely, LLP, 88 Black Falcon Avenue, Boston, Massachusetts 02210, on Monday, October 2, 2006, commencing at 1:26 p.m.</p> <p style="text-align: center;">HENNESSEY CORP. D/B/A ROBERT H. LANGE CO. 50 Congress Street - Boston, Massachusetts 02109 Tel: (617) 523-1874 Fax: (617) 523-7343</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">I N D E X</p> <p>1 Witness Direct Cross Redirect Recross</p> <p>2 DAVID DUBOIS 4</p> <p>3</p> <p>4</p> <p>5</p> <p>6 * * * *</p> <p>7</p> <p style="text-align: center;">E X H I B I T S</p> <p>8 No. Description Ident.</p> <p>9 1 File of Marine Safety Consultants .. 24</p> <p>10 2 Affidavit of David DuBois 29</p> <p>11 12-21-06</p> <p>12 3 Affidavit of David DuBois 31</p> <p>13 4 Affidavit of David DuBois 33</p> <p>14 5 Affidavit of David DuBois 65</p> <p>15 6 Letter from Marine Safety Consultants 66</p> <p>16 7 Affidavit of David DuBois 83</p> <p>17 8 Sketch 111</p> <p>18 9 Affidavit of Carlos Aguiar 157</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2 David F. Anderson, Esq.</p> <p>3 Latti & Anderson, LLP</p> <p>4 30-31 Union Wharf</p> <p>5 Boston, Massachusetts 02109</p> <p>6 (617) 523-1000</p> <p>7 On behalf of the Plaintiff</p> <p>8 Joseph A. Regan, Esq.</p> <p>9 Regan & Kiely, LLP</p> <p>10 88 Black Falcon Avenue</p> <p>11 Boston, Massachusetts 02210</p> <p>12 (617) 723-0901</p> <p>13 On behalf of the Defendant</p> <p>14</p> <p>15 ATTORNEY REGAN RETAINED THE ORIGINAL EXHIBITS</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 4</p> <p>1 DAVID DUBOIS,</p> <p>2 having been satisfactorily identified by the</p> <p>3 production of his driver's license and duly sworn by</p> <p>4 the Notary Public, was examined and testified as</p> <p>5 follows:</p> <p>6 DIRECT EXAMINATION BY MR. ANDERSON</p> <p>7 Q Mr. DuBois, my name is David Anderson as you know,</p> <p>8 and I'm going to take your deposition in connection</p> <p>9 with the Carlos Aguiar case. First of all when did</p> <p>10 you individually, when I say "you," David DuBois,</p> <p>11 first become involved in the Aguiar case, not Marine</p> <p>12 Safety Consultants but you as an individual?</p> <p>13 MR. REGAN: As an expert witness?</p> <p>14 MR. ANDERSON: In any capacity.</p> <p>15 A I first became aware of it when it happened,</p> <p>16 whatever the date of the incident was. Off the top</p> <p>17 of my head I don't remember the date of the</p> <p>18 incident.</p> <p>19 Q I think it was October.</p> <p>20 A October of 2003.</p> <p>21 Q How did you become aware of an incident involving</p> <p>22 Mr. Aguiar?</p> <p>23 A My office received a request to conduct an</p> <p>24 investigation into the accident, and it was assigned</p>

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<p style="text-align: right;">Page 5</p> <p>1 to one of our investigators to conduct the</p> <p>2 investigation, so I knew that was going on.</p> <p>3 Q Who was the request for an investigation, who did</p> <p>4 that come from?</p> <p>5 A On behalf of the boat owner's representative.</p> <p>6 Q Who was that individual?</p> <p>7 A I don't know.</p> <p>8 Q What is a boat owner's representative?</p> <p>9 A Someone --</p> <p>10 MR. REGAN: Objection.</p> <p>11 A Someone responsible for assigning accident</p> <p>12 investigations on behalf of the boat owner.</p> <p>13 Q Was that somebody who was working for or on behalf</p> <p>14 of Sunderland Marine Insurance Company?</p> <p>15 MR. REGAN: Objection.</p> <p>16 A I don't remember, I don't remember who made the</p> <p>17 first call for us to, from Marine Safety Consultants</p> <p>18 to conduct the investigation. I don't recall that.</p> <p>19 Q Who was going to pay Marine Safety Consultants?</p> <p>20 MR. REGAN: Objection. Let me just state</p> <p>21 based on my objections the mention of the word</p> <p>22 "insurance" or "insurance company," let me put on</p> <p>23 the record a standing objection so I don't have to</p> <p>24 jump up every time you are asking this.</p>	<p style="text-align: right;">Page 7</p> <p>1 representative paid for that, yes.</p> <p>2 Q Do you think that that is likely?</p> <p>3 A Versus who else? Most likely that is who it came</p> <p>4 from.</p> <p>5 Q You are aware that in this particular case that</p> <p>6 Sunderland Marine Insurance for the MY WAY, at least</p> <p>7 the primary policy?</p> <p>8 A As I sit here today it wasn't in my mind as to who,</p> <p>9 whether Sunderland was involved.</p> <p>10 Q Do you know who the claims representative for the</p> <p>11 insurance company for the FISHING VESSEL MY WAY is?</p> <p>12 A The name of the person, no, I don't.</p> <p>13 Q Do you know who --</p> <p>14 A Who it was back in 2003, I don't know.</p> <p>15 Q Do you know who the broker was who brokered the</p> <p>16 insurance?</p> <p>17 A I think I remember.</p> <p>18 Q Who was it?</p> <p>19 A Most likely it was Smithwick and Mariners Insurance</p> <p>20 Agency.</p> <p>21 Q Does Marine Safety Consultants do most of the New</p> <p>22 Bedford-based investigations for Smithwick and</p> <p>23 Clarke in connection with commercial fishing</p> <p>24 injuries?</p>
<p style="text-align: right;">Page 6</p> <p>1 Q Did you receive the call in which somebody requested</p> <p>2 an investigation?</p> <p>3 A Me personally?</p> <p>4 Q Yes.</p> <p>5 A I don't recall that. It comes in, assignments to</p> <p>6 conduct investigations or surveys come in either by</p> <p>7 telephone call, by e-mail, by fax, any number of</p> <p>8 different ways, so I don't recall how this</p> <p>9 assignment was rendered.</p> <p>10 Q Okay. Would that be reflected in the Marine Safety</p> <p>11 Consultant's file in this matter?</p> <p>12 A In the initial investigation file?</p> <p>13 Q How many files are there in this matter?</p> <p>14 A The investigative file that you are referring to,</p> <p>15 and I have the file that I have pertaining to my</p> <p>16 involvement as an expert on behalf of the boat</p> <p>17 owner.</p> <p>18 Q With respect to the investigation, who paid Marine</p> <p>19 Safety Consultants to conduct the investigation?</p> <p>20 A I don't know as we sit here.</p> <p>21 Q Do you believe that the insurance company for the</p> <p>22 vessel paid Marine Safety Consultants to conduct the</p> <p>23 investigation?</p> <p>24 A It's possible that the boat owner's claims</p>	<p style="text-align: right;">Page 8</p> <p>1 A I don't know if we do most of them, all of them or</p> <p>2 some of them. I have no direct knowledge as to</p> <p>3 whether or not anybody else is involved doing work.</p> <p>4 There is no Smithwick and Clarke any more.</p> <p>5 Q What is it now?</p> <p>6 A Smithwick and Mariners.</p> <p>7 Q With respect to Smithwick and Mariners presently,</p> <p>8 how many casualty investigations does Marine Safety</p> <p>9 Consultants do on an annualized basis in connection</p> <p>10 with injuries in the commercial fishing industry?</p> <p>11 A I don't know.</p> <p>12 Q Is it more than 50?</p> <p>13 A I don't think so.</p> <p>14 Q Is it more than 25?</p> <p>15 A It could be 25 on an annual basis, I'm not sure. I</p> <p>16 have never, I have never anticipated looking into</p> <p>17 that prior to today to have that information</p> <p>18 available.</p> <p>19 Q Who would have that information from Marine Safety</p> <p>20 Consultants?</p> <p>21 A If the information is available, it would be in,</p> <p>22 have to be based on a file search on an annual basis</p> <p>23 to go through those files to pick out who the broker</p> <p>24 was.</p>

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<p style="text-align: right;">Page 9</p> <p>1 Q Would Marine Safety Consultants' accounting records 2 reflect payments from an insurance company or 3 insurance broker? 4 A With some manipulation and research, I probably 5 could. 6 Q As you sit here today do you remember Marine Safety 7 Consultants receiving an assignment to perform an 8 investigation in connection with Mr. Aguiar's 9 injury? Do you remember that today? 10 A To the extent that I'm here today with a file 11 representing my opinion on the Aguiar incident and I 12 know it happened in 2003, I do not have any direct 13 memory as to who called, who took the call or how 14 the assignment was given. 15 Q Have you ever had an opportunity to look at the 16 investigative file? 17 A Some parts of it, yes, sir. 18 Q As I understand it, the insurance company for the 19 FISHING VESSEL MY WAY hired Marine Safety 20 Consultants sometime in around October of 2003 to 21 conduct an investigation in connection with 22 Mr. Aguiar's injury? 23 A That would be a synopsis of what transpired, yes. 24 Q Was there an individual at Marine Safety Consultants</p>	<p style="text-align: right;">Page 11</p> <p>1 A Many, many reasons. He wanted -- Do you want me to 2 go into it? 3 Q Let me ask it in a shorter way. 4 A I would be glad to tell you. 5 Q What I'm trying to figure out is whether you guys 6 are still on the same team. 7 A He was in love and the girl he was in love with 8 didn't like living in New England. And he had 9 friends in North Carolina and they had gone down 10 there to visit and they decided to relocate to a 11 more temperate climate, a more youthful atmosphere 12 for their age group, and to set off on their own to 13 expand their opportunities and change their 14 lifestyle. 15 Q So the relationship between you personally and your 16 son Russell remains the same, correct? Good 17 relationship? 18 A Yes. 19 Q And the relationship between Russell and Marine 20 Safety Consultants remains a good relationship 21 still? 22 A Well, he has no fixed relationship with Marine 23 Safety Consultants, so to the extent that he didn't 24 leave on unfriendly terms and there were no</p>
<p style="text-align: right;">Page 10</p> <p>1 who was assigned the task of conducting that 2 investigation? 3 A Yes, there would have been an investigator assigned, 4 perhaps may have been more than one. 5 Q In connection with Mr. Aguiar's injury, do you know 6 who was assigned to conduct the investigation? 7 A I know who did parts of it, I don't know who did all 8 of it. 9 Q Who did parts of it? 10 A My son, Russell. 11 Q Is Russell DuBois still employed by -- That would be 12 Russell DuBois, correct? 13 A Yes. 14 Q Is he still employed by Marine Safety Consultants? 15 A Only on a part-time, long-distance relationship to 16 do certain medical bill reviews. He is no longer a 17 full-time staff investigator. He has relocated to 18 another state and working in another employment. 19 Q Do you know what his current address is? 20 A I know it's Ashville, North Carolina. I don't know 21 his street address by memory. 22 Q Do you know why he left Marine Safety Consultants? 23 A Yes. 24 Q Why was that?</p>	<p style="text-align: right;">Page 12</p> <p>1 work-related issues as to why he relocated to North 2 Carolina, the answer to that would be yes. 3 Q You don't know who gave Marine Safety Consultants 4 the assignment? 5 A I don't remember. 6 Q Has either Mr. Lima or Mr. Cura ever hired Marine 7 Safety Consultants directly? 8 A I don't know. I don't recall if those individuals 9 were involved personally with the assignment. 10 Q So the initial assignment is to conduct an 11 investigation. At least one of those individuals 12 assigned to perform that investigation was your son 13 Russell DuBois, is that correct? 14 A Yes. 15 Q Do you know if there was another individual who was 16 assigned to conduct the investigation? 17 A I believe at some point in time Frank Sweeney took 18 over the management of the file. To what extent he 19 did any investigation, I don't recall. 20 Q Is Frank Sweeney an employee of Marine Safety 21 Consultants? 22 A He is. He is an employee of a company called 23 Maritime Claims Associates. 24 Q* What is the relationship between Maritime Claims</p>

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